

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LUIGY LOPEZ-DELGADO

Case No. 3:23-cv-00412-ART-CLB

Petitioner,

ORDER

v.

TIM GARRETT,

Respondents.

On November 16, 2023, this Court appointed counsel for Petitioner Luigy Lopez-Delgado in this habeas corpus action. (ECF No. 13.) On January 4, 2024, Lopez-Delgado timely filed his first-amended petition and moved for leave to file a second-amended petition. (ECF Nos. 14, 15.) Respondents opposed the motion, and Lopez-Delgado replied. (ECF Nos. 16, 17.)

In his motion, Lopez-Delgado states that he filed his first-amended petition as a protective petition to ensure that all the claims would be preserved as timely filed. (ECF No. 15.) Lopez-Delgado requests leave to file a second-amended petition because his counsel is still investigating and waiting for court records from Washoe County and from prior counsel. (*Id.* at 2.) Lopez-Delgado also explains that a second-amended petition would reflect his counsel's considered judgment on various issues because, as of now, counsel has not had an opportunity to exercise that judgment. (*Id.* at 3.) Lopez-Delgado further requests that the Court waive the requirement of LR 15-1(a), explaining that the rule is ill-suited for this situation. (*Id.* at 4.)

Local Rule 15-1(a) states that a proposed amended pleading must be submitted with the motion for leave to amend unless otherwise permitted by the court. When the court appoints counsel to represent habeas corpus petitioners, as a matter of course it gives counsel leave to file an amended petition. The only

1 difference here is that counsel is trying to file a petition before the one-year
2 deadline to minimize the probability that grounds for relief would not relate back
3 to a timely petition. The Court sees no reason to depart from its usual practice in
4 habeas corpus cases of allowing amended petitions under these circumstances.
5 Moreover, under Federal Rule of Civil Procedure 15(a)(2), a party may amend a
6 pleading with the Court's leave, and "[t]he court should freely give leave when
7 justice so requires."

8 The Court finds that there is good cause for Lopez-Delgado to file a second-
9 amended habeas petition, so the Court grants the motion and waives the
10 requirement of LR 15-1(a). This order does not, however, affect, in any manner,
11 the operation of the statute of limitations in this case, and the Court does not
12 mean in this order to convey any opinion whatsoever about when the limitations
13 period expires (or expired).

14 It is therefore ordered that the motion for leave to file a second-amended
15 petition (ECF No. 15) is granted. Lopez-Delgado has 90 days from the date of this
16 order to file a second-amended petition. In all other respects, the schedule for
17 further proceedings set forth in the order entered November 16, 2023 (ECF No.
18 13) remains in effect.

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21 DATED THIS 31st day of January 2024.

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25 ANNE R. TRAUM
26 UNITED STATES DISTRICT JUDGE
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